

**Internal Revenue Service
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**Department of the Treasury
Director, Exempt Organizations**

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Contact Person:
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Legend:

B = Program
C = Scholarship
D = Foundation
F = Organization
G = Corporation
X = Test

Dear

This is in reference to your representative's letter of January 21, 2009 requesting advance approval of your scholarship grant procedures under section 4945(g)(1) of the Internal Revenue Code.

The information submitted shows that you, private foundation D, will make grants that will be administered by F, a publicly supported organization, under its B program. F selects individual scholarship recipients through its C competition. The initial phase of the competition is the X Test, which is given annually in participating high schools by high school officials. Those students scoring within the top one-half of one percent on a state-by-state basis are designated as Semifinalists; they may advance to the Finalist level by submitting an application form that includes a high school record (provided by their high school officials) showing strong academic performance, a personal essay, extra curricular accomplishments and the recommendation of their high school principal or school official designated by the principal.

You have entered into an agreement with F whereby you have agreed to sponsor a specific number of scholarships each year, to be awarded to children and/or relatives of employees of G

as well as for a very limited category of employees, consisting only of those employees who are juniors in high school at the time they enter C and high school seniors at the time the scholarship is awarded. Under the B program, F may award "special scholarships" to high-scoring students below the finalist level, if there are an insufficient number of finalists.

F selects students from among those children and relatives of employees and employees who attained the Finalist level in C to receive D sponsored scholarships. These scholarships comply with the facts and circumstances test under Section 4 of Revenue Procedure 76-47 because the probability of attaining Finalist level and therefore being eligible for a scholarship is extremely low. If the number of children and relatives of employees and employees who qualify as Finalists is less than the number of scholarships that D agreed to sponsor, F selects additional B recipients from among high-performing students below the Finalist level. The number of B recipients is limited to not more than 25% of eligible applicants in accordance with the facts and circumstances and/or percentage tests of Revenue Procedure 76-47.

F administers all aspects of the program and bears all administrative costs. An independent selection committee selects scholarship recipients. F confirms each individual scholarship recipient's enrollment at a college or university in the United States that holds accredited status with a regional accrediting commission on higher education; makes payment of each award through the financial aid office of the institution; and supervises and investigates the use of the scholarships by the recipients in their educational program.

G intends to treat high school juniors the same way it treats children of employees for purposes of participation in the B program.

Scholarships under C are not used as a means of inducement to recruit employees and are not restricted to a course of study that would be of particular benefit to G. A student's eligibility is determined at the time the scholarship award is offered and a scholarship will not be terminated if the student's parent or relative subsequently terminates employment or, in the case of an employee, if the student terminates employment. The student's eligibility may not be conditioned on any other employment-related factors, such as the parent's position, service or duties. The prior employment period for establishing eligibility may not exceed three years. Students must use their scholarships only to pay educational costs at an institution that meets the requirements of Section 170(b)(1)(A)(ii).

Section 4945 of the Code provides for the imposition of taxes on each taxable expenditure of a private foundation.

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

Section 4945(g)(1) of the Code provides that section 4945(d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that the grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).

Revenue Procedure 76-47, 1976-2 C.B. 670, sets forth guidelines to be used in determining whether a grant made by a private foundation under an employer-related program to a child of an employee of the particular employer to which the program relates is a scholarship grant subject to the provisions of section 117(a). If a private foundation's program satisfies the seven conditions set forth in sections 4.01 through 4.07 of Rev. Proc. 76-47 and meets the percentage test described in section 4.08, the Service will assume the grant will be subject to the provisions of section 117(a).

Section 4.08 of Rev. Proc. 76-47 provides a percentage test guideline. It states that in the case of a program that awards grants to children of employees of a particular employer, the program meets the percentage test if the number of grants awarded under that program in any year to such children does not exceed 25 percent of the number of employees' children who (i) were eligible, (ii) were applicants for such grants, and (iii) were considered by the selection committee in selecting the recipients of grants in that year, or 10 percent of the number of employees' children who can be shown to be eligible for grants (whether or not they submitted an application) in that year.

F will supply statistical information on applications received and grants made which will enable you to maintain the records required by Rev. Proc. 76-47. You have agreed that your scholarship program will meet the requirements of Rev. Proc. 76-47, and that special scholarship awards will be in compliance with either the 25 or the 10 percent test of section 4.08 applicable to a program that awards grants to children of employees of a particular employer.

If you wish to meet the 10 percent test, "eligible" employees' children shall include all employees' children who take the required tests in the applicable year and otherwise meet the minimum requirements for eligibility established by you. In addition, if you wish to meet the 10 percent test, you must obtain an actual count to show the number of employees' children who are eligible for grants, whether or not they submitted an application, in the applicable year.

Accordingly, based upon the information presented, and assuming the program will be conducted as proposed, with a view to providing objectivity and non-discrimination in the awarding of scholarship grants, we rule that your grants to F for the awarding of scholarship grants to children and/or relatives of employees and employees of G comply with the requirements of section 4945(g)(1) of the Code. Thus, such expenditures made in accordance with those procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) of the Code.

The recipient of the scholarship is responsible for determining whether all or part of the scholarship is includible in gross income under section 117 of the Code. We understand that F will advise the recipient that amounts granted are taxable income, if the aggregate scholarship amounts received by the recipient exceed tuition and fees (not including room and board) required for enrollment or attendance at the educational institution and fees, books, supplies, and equipment required for courses of instruction.

This ruling is based on the understanding that there will be no material change in the facts upon which it is based and that no grants will be awarded to relatives of members of selection committees, or for a purpose inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

This ruling will remain in effect as long as the procedures in awarding grants under your program remain in compliance with sections 4.01 through 4.08 of Rev. Proc. 76-47. Records should be maintained to show that you meet the applicable percentage test of section 4.08 thereof.

Please note that this ruling is only applicable to grants awarded under the B competition. Before you enter into any other scholarship or educational loan program you should submit a request for advance approval of that program, and the requirements of Rev. Proc. 76-47 must be met in the aggregate.

Your procedures for awarding scholarships to students designated as finalists under C are considered to satisfy the facts and circumstances test of Rev. Proc. 76-47 and, therefore, only those scholarships offered to individuals below the finalist level under your B will be counted in determining whether the percentage test of Rev. Proc. 76-47 is met with respect to special scholarship awards made under the B competition and any scholarship awards made under any other such program.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions, that we intend to make available for public inspection, is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions about this ruling letter, please contact the person whose name and telephone number are shown in the heading of this letter. Because this ruling letter could help to resolve any questions, please keep it in your permanent records.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements

Enclosure: Notice 437